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THE CORPORATION TRUST COMPANY AND ASSOCIATED COMPANIES

The United States District Court, District of Massachusetts has ruled that stock certificates, endorsed by the holder to a brokerage firm, with the latter's name inserted as attorney to effect transfer, which were subsequently stolen, are not to be regarded as transferable by an innocent purchaser or pledgee, either at common law or under the Uniform Stock Transfer Act. (See page 184.)

The Supreme Court of Mississippi has ruled that an instalment sale which was otherwise an interstate transaction became an intrastate transaction because it involved the keeping of the machinery sold in repair for one year. (See page 177.)

The Massachusetts Supreme Judicial Court has held that a foreign non-profit co-operative company may be qualified to do business in Massachusetts. (See page 177.)

Raymond Kenyon

President.

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The Corporation Journal is published by The Corporation Trust Company, monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve The Journal in a permanent file, a special and very convenient form of binder will be furnished at cost ($1.50).

Contents for May

What Constitutes Doing Business

Specialty Salesmen

If a foreign corporation engaged in interstate commerce sends a representative into a state in which it is not licensed to do business, for the purpose of furthering purchases of the foreign corporation's products from its local dealers, and orders are taken by the representative and placed with and filled by the local dealers, a question arises as to whether the foreign corporation is "doing business" within the state.

There are at least three viewpoints from which the question of "doing business" may be viewed. These are: (1) qualification, (2) taxation and (3) service of process.

Qualification: In an Arkansas decision,[1] decided in 1919, it was held that a transaction between a foreign corporation and a dealer in the state, whereby the corporation undertook to carry on for the dealer's benefit what was designated as a "trade campaign," the amount of compensation to be received by the corporation being dependent on the amount of increase in the dealer's sales, constituted the doing of business within the state so as to require it to be licensed to do business in the state. In an Alabama case, an unlicensed foreign corporation which had sold cigars in quantity to an Alabama concern was ruled to be required to be qualified to do business where it placed an employe in the Alabama customer's store to sell cigars to the public.[2]

Taxation: That such activities constitute local or domestic business was the conclusion reached by the Supreme Court of the United States in a 1918 decision,[3] where the court, after mentioning the Northwestern Consolidated Milling Company, said:

> "This company was incorporated under the laws of Minnesota, operated flour mills there, and sells the flour to wholesale dealers throughout the country. It has an office in Massachusetts where it employs several salesmen for the purpose of inducing local tradesmen to carry and deal in its flour. These salesmen solicit and take orders from retail dealers and turn the same over to the nearest wholesale dealer, who fills the order and is paid by the retailer. Thus the salesman, although not in the employ of the wholesaler, is selling flour for him. Of course, this is a domestic business,—inducing one local merchant to buy a particular class of goods from another,—and may be taxed by the State, regardless of the motive with which it is conducted."

In an Alabama case presenting substantially the same type of facts, the Alabama Court of Appeals in 1924 concluded that a foreign corporation was to be regarded as subject to a municipal license tax.[4]

Service of Process: The decisions under this heading are more numerous, with widely varying facts. Available space does not permit more than a listing of decisions according to whether service upon the foreign corporation involved was upheld or set aside.[5]

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[1] *Dean v. Caldwell*, 141 Ark. 38, 216 S. W. 31.

[2] *Paul et al. v. Patterson Cigar Co.*, 98 So. 787.

[3] *Cheney Brothers Company et al. v. Massachusetts*, 246 U. S. 147, 155.

[4] *City of Birmingham v. Hoover Suction Sweeper Co.*, 100 So. 83.

[5] **Service of Process Upheld:** *Rendelman v. Niagara Sprayer Co.*, (Ill.) 16 F. 2d 122; *La Porte Heinekamp Motor Co. v. The Ford Motor Co.*, (Md.) 24 F. 2d 861; *Wilson v. Hudson Motor Car Co.*, (Neb.) 28 F. 2d 347; *Kraus v. American Tobacco Co. et al.*, (Pa.) 131 Atl. 487; *Clements v. MacFadden Publications, Inc.*, (Tex.) 28 F. Supp. 274. **Service of Process Set Aside:** *Whitaker v. MacFadden Publications, Inc.*, (D. C.) 105 F. 2d 44; *Southeastern Distributing Co. v. Nordyke & Marmon Co.*, (Ga.) 125 S. E. 171; *Peoples Tobacco Co., Ltd. v. American Tobacco Co.*, (La.) 246 U. S. 79; *Hinchcliffe Motors, Inc. v. Willys-Overland Motors, Inc.*, (Mass.) U. S. Dist. Court, Dist. of Mass., Dec. 7, 1939, CCH Court Decisions Requisition No. 226905; *Harrell v. Peters Cartridge Co.*, (Okla.) 129 Pac. 872; *Wiggins & Sons, Inc. v. Ford Motor Co.*, (S. C.) 186 S. E. 272; *Oyler v. J. P. Seeburg Corp.*, (Tex.) 29 F. Supp. 927.

Domestic Corporations

Delaware.

Stockholder's right of action held not barred by prior stockholders' class or representative suit where allegations in bills of complaint differed. Complainant stockholder in defendant company sought to have declared void as to complainant an amendment to defendant's charter and to obtain an injunction against the payment of dividends on defendant's common stock until accrued and unpaid dividends on complainant's Class A stock, outstanding at the time of the amendment, had been paid in full, and for other relief. Defendant filed a plea, in the nature of res adjudicata, based on the fact that another stockholder had previously filed a class or representative bill against the defendant, alleged to have involved the same question raised by complainant, and that this bill had been dismissed. The Court of Chancery, after an examination of the bills in both actions, found that different questions were raised in each, inasmuch as the present complainant's bill alleged unfair treatment of the Class A stockholders to the advantage of the other stockholders of the corporation, while the bill in the prior action alleged an unlawful reduction of the corporate capital represented by the Class A stock. The defendant's plea was, therefore, held not to bar complainant's right of action. *Bay Newfoundland Co., Ltd. v. Wilson & Co., Inc.* 11 A. 2d 278. Commerce Clearing House Court Decisions Requisition No. 234004. Christopher L. Ward, Jr. of Wilmington, for complainant. Hugh M. Morris and Edwin D. Steel, Jr., of Wilmington, for defendant.

District of Columbia.

Long-established domestic company, which did not use its corporate name in its dealings with the public, held not to have an exclusive right to use of its corporate name. Plaintiff, a District of Columbia corporation named "Lawyers Title Insurance Company" sought an injunction against defendant Virginia corporation, "Lawyers Title Insurance Corporation," to restrain defendant from using its corporate name for doing the business of insuring real estate titles in the District of Columbia. Plaintiff had been incorporated in 1896, while defendant did not qualify to do business in the District until 1935 and did not open an office there until 1938. The United States Court of Appeals for the District of Columbia affirmed a judgment dismissing the bill. The appellate court noted that the District has no statute, such as is common elsewhere, prohibiting incorporators to adopt a name identical with that of an existing corporation or so similar as to mislead or cause confusion to the public. The court said: "The case involves no deliberate attempt by one competitor to simulate another or crafty scheme for luring away business by deception. Both parties have conducted themselves honorably and with regard for high conceptions of business ethics. Their subjective attitudes, if material, are not fraudulent

or dishonest. The naked question is whether plaintiff has an exclusive right, by virtue of prior appropriation in this jurisdiction, to use the name which each has acquired lawfully and with honest purpose." It was concluded that plaintiff had no such exclusive right. While indicating that the plaintiff would have been entitled to relief if it had built and maintained its good will exclusively and distinctively about its corporate name, the Court of Appeals found reason to deny relief because the plaintiff's name was not used in its business with the public, but was submerged and had been submerged for many years under arrangements amounting virtually to a partnership with two other District title companies, whereby a consolidated title for the three companies was used. Plaintiff was regarded as having abandoned the right to the exclusive use of its name by conducting its business in this manner. *Lawyers Title Ins. Co. v. Lawyers Title Ins. Corporation*, 109 F. 2d 35. Louis M. Denit, Thomas Searing Jackson and J. Richard Earle of Washington, D. C., for appellant. H. Cecil Kilpatrick of Washington, D. C., and Andrew D. Christian of Richmond, Va., for appellee. (*Appeal filed in the Supreme Court of the United States, February* 19, 1940, *Docket No.* 738. *Writ of certiorari denied, April* 8, 1940.)

Georgia.

Statute, providing for service of process by publication upon a domestic corporation, ruled invalid. Defendant, a Georgia corporation, not having a place of business or an officer within Georgia upon whom service of process could be had, was ordered by the lower court to be served by publication in accordance with section 22-1104 of the Code of 1933. Defendant appeared specially, seeking to have the order vacated and asserting that the Code section violated the due process clauses of the State and Federal Constitutions. The Supreme Court of Georgia traced the provisions for service by publication to an act approved in 1856 and noted that "while the section has been before the courts of this State a number of times, this is apparently the first time its constitutionality has been called in question." The court stressed that "the Georgia statute has no requirement as to the fact of the absence, except the statement that there is no place for doing business, or no officer in the State upon whom service can be made, *within the knowledge of the plaintiff.*" "It is not even a requirement that as a matter of fact the corporation shall have no public place for doing business, or that it have no individual in office upon whom service may be perfected, but the act makes it possible for a binding judgment to be rendered on the kind of so-called notice named in this Code section, provided an affidavit be filed by the plaintiff that there is none within his knowledge. This is not, according to the 'law of the land,' due process of law; is not notice reasonably calculated to inform the defendant of the pending suit." The court concluded therefore that the statute was in conflict with the due process clause of the Constitution of Georgia and of the fourteenth amendment

to the Constitution of the United States and that the action should have been dismissed. *Piggly-Wiggly Georgia Co. v. May Investing Corporation, Inc.*, 6 S. E. 2d 579. Ragland, Kurz & Layton of Jacksonville, Fla., and Hooper & Hooper of Atlanta, for plaintiff in error. Herbert J. Haas, Geo. B. Tidwell, B. S. Boley and Joseph F. Haas of Atlanta, for defendant in error.

Foreign Corporations

District of Columbia.

Maryland corporation, suing in District of Columbia court four years after forfeiture of its charter in Maryland, denied recovery. The appellee, a Maryland corporation, whose charter was forfeited on January 28, 1932, for non-payment of taxes, brought this action in 1936 in the District of Columbia to recover the balance due on a note from the appellant to the corporation which had been renewed on January 11, 1932, payable after the forfeiture, on November 27, 1932. The debtor had made payments to the corporation subsequent to the forfeiture, in ignorance of it. The United States Court of Appeals for the District of Columbia reversed a judgment of the trial court in favor of the corporation, ruling that the debtor was not estopped to deny the corporate capacity of the creditor to bring the action by reason of his dealings with the "corporation" after the forfeiture of its charter. In the course of its opinion, the court noted that "there is in Maryland no period of time during which a corporation dissolved 'for non-payment of taxes' is kept alive for the purpose of collecting its assets and paying its debts, etc. The corporation is dead from the moment of the proclamation unless revived by subsequent payment of the taxes, which admittedly was not the case here." *Glennan v. Lincoln Investment Corporation*, United States Court of Appeals for the District of Columbia, February 12, 1940. Commerce Clearing House Court Decisions Requisition No. 231250. W. C. Sullivan of Washington, D. C., for appellant. Arthur J. Hilland of Washington, D. C., for appellee.

Florida.

Corporation, engaged in interstate commerce, not required to be licensed in order to sue or to allege in pleadings reasons for not being licensed. Plaintiff, an Illinois corporation, had a traveling representative in Florida who solicited defendant to purchase "Illustrated Route Selling," with payments to be made on a monthly basis, the contract becoming binding when accepted in Illinois. Delivery of the goods purchased was made and this action was instituted to recover on the contract, under which no payments had been made. The question raised was whether plaintiff was required, under the statutes, to be licensed as a foreign corporation before suit could be maintained. The Florida Supreme Court reversed a judgment for the defendant, ruling that the transaction was an interstate transaction and that it was not necessary that the corporation be qualified

before instituting legal proceedings in the State, and further, that plaintiff was not required to set forth its reasons for non-compliance in its declaration. *The Steven-Davis Company v. Stock*, 193 So. 745. Commerce Clearing House Court Decisions Requisition No. 231070. John A. H. Murphree of Gainesville, for plaintiff in error. Douglas & Schad of Gainesville, and Ira J. Carter, Jr., of Newberry, for defendant in error.

Massachusetts.

Foreign non-profit co-operative company may be qualified to do business in the Commonwealth. Petitioner, an Oregon non-profit cooperative company, doing intrastate business in Massachusetts, sought by mandamus to compel the respondent Commissioner of Corporations and Taxation to accept the documents and fee which would qualify it as a foreign corporation authorized to do business in Massachusetts. After an exhaustive examination of the statutory requirements and their history, the Massachusetts Supreme Judicial Court reached the conclusion that the writ should issue and petitioner be permitted to be qualified. *Pacific Wool Growers v. Commissioner of Corporations and Taxation,** 25 N. E. 2d 208. Commerce Clearing House Court Decisions Requisition No. 230856. R. Hall, for petitioner. P. A. Dever, Attorney General, and R. Clapp, Assistant Attorney General, for the respondent, submitted a brief. G. E. Roewer and A. F. Reel, by leave of court, submitted a brief as amici curiae.

* The full text of this opinion is printed in **The Corporation Tax Service**, Massachusetts, page 507.

Mississippi.

Instalment sale ruled an intrastate transaction because it involved keeping of machinery sold in repair for one year. A corporation, doing business in Chicago, Illinois, not licensed in Mississippi, accepted an order in Chicago from a resident of Mississippi for the sale of an ice cream dispenser. This was shipped to Mississippi where the purchaser proceeded to use it. Payments were to be made in twenty-four consecutive monthly instalments, to cover which the purchaser executed promissory notes. Title was to remain in the corporation until all of the notes were paid. There being a default, this action of replevin was brought by the corporation to recover possession of the property sold. The contract of sale contained provision for the gratis servicing of the property for one year by the seller's authorized serviceman. A local mechanic was employed for this purpose and the dispenser was serviced for one year. A judgment had been obtained by the corporation in the lower court and the defendant appealed, contending the corporation was engaged in intrastate business in Mississippi. The Supreme Court of Mississippi, Division A, observed: "This contract of sale is not an intrastate transaction unless this service agreement makes

it such. In order so to do this agreement must impose on the appellee the performance of acts of a local character, which are not essential to the making of the sale and delivery of the ice cream dispenser." "The servicing of this ice cream dispenser was purely a local transaction, not incidental to or necessary for the formation of the sales contract, and was subject wholly to the supervision and control of the state. It necessarily follows therefore that when servicing this ice cream dispenser, which it did through an agent employed for that purpose, the appellee was doing business in this state, and the contract of which this service agreement is a part violates Section 4164, Code of 1930, and is unenforceable." *Case v. Mills Novelty Co.*,* 193 So. 625. Commerce Clearing House Court Decisions Requisition No. 231623. M. L. Heidelberg of Waynesboro, for appellant. Arthur G. Busby of Meridian, for appellee.

*The full text of this opinion is printed in **The Corporation Tax Service**, Mississippi, page 515.

Pennsylvania.

Service of process upon former soliciting agent for foreign corporation set aside. Service of process against defendant Ohio corporation, not registered to do business in Pennsylvania, was made upon the stenographer for a person named Long, who was sales agent for a large number of manufacturing concerns. Although he solicited a few orders for defendant on a commission basis, his success in that direction was so slight that his services had been discontinued prior to the service of the writ. The orders solicited by Long were transmitted to the home office of defendant for approval or rejection, and, if accepted, the merchandise was shipped from its mill at Mansfield, Ohio. Defendant maintained no office in Pennsylvania and had no stock of merchandise or property there. Its name was listed in the telephone book and on the directory of the building in which the office leased by Long was located. The Pennsylvania Supreme Court, after a consideration of these facts, issued an order resulting in the setting aside of the service. *Otto A. C. Hagen Corporation v. Empire Sheet & Tin Plate Company*,* 11 A. 2d 144. Commerce Clearing House Court Decisions Requisition No. 230830. Abram P. Piwosky and Samuel I. Sacks of Philadelphia, for the plaintiff. Edgar S. McKaig, Adams, Childs, McKaig & Lukens of Philadelphia, for the defendant.

*The full text of this opinion is printed in **The Corporation Tax Service**, Pennsylvania, page 316.

A foreign corporation, doing intrastate business, must aver, in bringing suit in equity, that it has registered and is authorized to do business in the state. Upon the filing of a bill in equity by plaintiff foreign corporation, engaged in Pennsylvania in the business of furnishing to hotels checking facilities, it was met with the preliminary objection of the defendant that the plaintiff had failed to aver in its bill of complaint that it was registered as a foreign corporation

to do business in the Commonwealth of Pennsylvania. The Court of Common Pleas, Philadelphia County, observed that "it is firmly established that if the transactions described are interstate activities a foreign corporation need not aver registration, but the defendant must aver the particular acts which constitute doing business in its affidavit of defense, whereas if the transactions described in the bill of complaint are intrastate in character and not isolated transactions but a continuous prosecution of the ordinary business of the plaintiff, the plaintiff must aver registration as a foreign corporation in its bill of complaint." The objection was therefore sustained and the plaintiff directed to file an amended bill of complaint within thirty days averring therein that as a foreign corporation it had registered and was authorized to do business in Pennsylvania, or suffer dismissal of the bill. *East and West Coast Service Corporation v. Paphagis,** Court of Common Pleas No. 5, Philadelphia County, January 3, 1940. Commerce Clearing House Court Decisions Requisition No. 229724. Isaac Hassler of Philadelphia, for plaintiff. George H. Detweiller of Philadelphia, for defendant.

* The full text of this opinion is printed in **The Corporation Tax Service, Pennsylvania, page 310.**

Tennessee.

Money owing by qualified foreign corporation to non-resident employee held subject to attachment and garnishment in Tennessee. A foreign corporation qualified to do business in Tennessee employed a non-resident of Tennessee against whom the plaintiff asserted a claim for damages as a non-resident debtor for a tort committed in Tennessee. Money being due the non-resident from the foreign corporation for services rendered out of the State, the question was whether plaintiff could subject this money to attachment and garnishment. The corporation had recognized the jurisdiction of the local court, answered to its indebtedness and held the amount subject to the orders of the court. The lower court had ruled that the company was not subject to process, but upon appeal the Supreme Court of Tennessee reversed this holding. *Burnett v. Simmons,* 135 S. W. 2d 452. Winchester & Bearman and John Porter of Memphis, for plaintiff. Wallace Lopez of Memphis, for defendant.

Washington.

Assignee of unlicensed foreign corporation doing business in state, held barred from suing on corporation's accounts in state courts. An unlicensed foreign corporation, doing business in the State of Washington, had carried on transactions with the defendant out of which the account sued upon arose. The foreign corporation had assigned the account to the plaintiff and the sole question presented was whether plaintiff, as assignee, could maintain the action, which could not have been maintained by its assignor by reason of the latter's failure to become authorized to carry on intrastate business.

erve to illustrate it--

The keystone of C T representation service, of course, is the furnishing of the office or agent, or both, as required, through the system of offices and representatives covering every state in the United States and every province of Canada, maintained by The Corporation Trust Company, C T Corporation System and associated companies. That is the keystone: a function that eliminates completely all risk of the corporation's ever being left without an office in the state or a representative at the registered address to receive service of process and official communications—but C T Representation includes much more.

For instance, in the matter of state taxes to be paid and reports to be filed: through the C T Notification Bulletins the attorney (or whoever he may designate) is notified not only of every regular requirement imposed by the state in which we furnish his client's representation, but also of all changes in the state laws, taxes, rulings or regulations. Each Notification Bulletin shows the particular requirement, when due, with whom filed or to whom paid, rate of tax, exemptions, penalties, etc., and enclosed with each Bulletin are the necessary prescribed forms, when available, or information as to how they may be obtained.

In addition, each topical paragraph of each of the Notification Bulletins bears a citation to the corresponding section of the Corporation Tax Service, State and Local (furnished as a regular part of C T Representation Service for each state in which represented) where may be found the complete text of all tax laws of that state affecting corporations, and the main features of the laws having a collateral relationship to the subject of corporation taxes: the blue sky, corporation, anti-trust and stock transfer laws. Being in loose-leaf form, the tax service is kept constantly up to the minute by new or revised pages forwarded (with cumulative index) as quickly as changes occur either in laws or regulations or through court decisions.

Then there is the matter of the handling of process and communications served: from long experience with the various characters of process that demand different methods of procedure in different cases, we have evolved a system by which the attorney may work out in advance specific directions for the handling of each different type of process—directions which are followed automatically thereafter: One type of process to go to one address, other types to other addresses; or certain types to one address and notification of the same to another; in some cases mail to be used, in others the telephone or telegraph—all as each attorney may elect for the best protection of his own client's interests.

Important as each of the above features is, from the viewpoint of safety and protection, there is one feature of C T Representation which is perhaps even MORE important to counsel and client: C T REPRESENTATION IS, ALWAYS HAS BEEN, AND ALWAYS WILL BE, RENDERED ONLY AT THE DIRECTION AND UNDER THE SUPERVISION OF EACH CORPORATION'S OWN LAWYER.

The Supreme Court of Washington reversed a judgment for the plaintiff and ordered the action dismissed. The court noted that "it is generally, if not universally, held that the assignee cannot maintain an action in cases where the foreign corporation, by reason of failure to comply with the laws of the forum, could not maintain the action." The court then referred to two Washington cases in which assignees were permitted to maintain actions as such, although the assignors were Washington corporations whose only disability to sue arose from their failure to pay the annual license fee. "But here," continued the court, "the assignor corporation not only has failed to pay an annual license fee, but has failed to comply with any of the laws prerequisite to the right of foreign corporations to engage in intrastate business. Without rendering itself amenable to the laws of this state, it nevertheless asks the protection of the state's courts. To admit the assignee's right to maintain this action would, in effect, permit a foreign corporation, in contravention of Article 12, Section 7 of the Constitution, to transact business in the state on more favorable conditions than are prescribed by law to similar corporations organized under the laws of this state." *Association Collectors, Inc. v. Hardman et ux.*,* 98 P. 2d 318. Commerce Clearing House Court Decisions Requisition No. 231568. Edward Starin of Seattle, for appellants. Matthew Stafford of Seattle for respondent.

*The full text of this opinion is printed in **The Corporation Tax Service, Washington, page 316.**

Taxation

Indiana.

Ch. 79 of 1929, requiring licensing of foreign finance companies, held not applicable to such a company qualified before enactment of that act. The appellee company was a foreign corporation admitted to do business in Indiana in 1920. In 1929, Chapter 79 of the acts passed that year provided for the filing of annual reports by foreign corporations engaged in the business of financing sales of automobiles, radios and other personal property in Indiana and for the payment of a license fee. In an action to recover such a fee from the appellee, the lower court had given judgment for the company, ruling that the act was invalid. The Supreme Court of Indiana affirmed the judgment for the company although it indicated "that chapter 79 is not unconstitutional." It based its ruling in favor of the company upon the ground that it was in the state prior to the enactment of the law. "The state," said the court, "had the right when it adopted chapter 79 to impose whatever conditions and restrictions it saw fit upon foreign corporations thereafter desiring to engage in the business of financing sales in Indiana. The exercise of this power on the part of the state was subject, however, to the rights and privileges of those corporations that entered the

state under and pursuant to provisions of the act of 1907. As to these the state can impose no burdens which do not apply with equal force upon domestic corporations engaged in the business. Chapter 79 clearly does not apply to domestic corporations, nor may it be rationally justified as a proper exercise of the legislative power to classify for the purposes of general taxation. A statute may be constitutional in the abstract, yet its application to a particular party may result in a violation of his constitutional rights. It is not necessary to strike down chapter 79 in order to afford protection to foreign corporations whose rights have been fixed under the act of 1907. *State ex rel. Davenport v. International Harvester Co.*,* 25 N. E. 2d 242. Omer S. Jackson, Atty. Gen., James K. Northam, Asst. Atty. Gen., and Remster A. Bingham and Oscar C. Hagemier of Indianapolis, for appellants. Baker, Daniels, Wallace & Seagle and G. R. Redding of Indianapolis, for appellee.

* The full text of this opinion is printed in **The Corporation Tax Service**, Indiana, page 3304.

Minnesota.

Wholly owned affiliated companies operating in state held required to be taxed as one corporation. The defendants and numerous other corporations operating in Minnesota were, during the year in question, owned by a foreign corporation, 100% of all their voting stock being owned by that foreign corporation, which did not operate in Minnesota except through its subsidiaries. The question presented was whether or not these affiliated corporations must be taxed as though the combined taxable net income were that of one corporation. The companies contended they must be so taxed, while the state took the stand that it was within the discretion of the commission so to tax them or to assess them severally. The statute, Sec. 32(c), Ch. 405, L. 1933, provided in part: "If 90% of all the voting stock of two or more corporations is owned by or under the legally enforcible control of the same interests, the commission may impose the tax as though the combined entire taxable net income were that of one corporation." Interpreting the statute, the Minnesota Supreme Court said: "We are convinced that our legislature intended the imposition of a tax upon the affiliated corporations described in the last sentence of Sec. 32(c) as if they were but one corporation, a provision which is obviously fair and which under normal conditions would be profitable to the state as imposing a higher rate of taxation. It is clear that such a construction of the tax is normally in the interest of the state. Any other construction of the act would be unfair to the state as permitting what is actually one taxpayer to be divided into several so that a lower rate would be applicable." "Nor does it offend our tax law or any provision of c. 405 that the affiliated or related corporations which have no tax status in this state are not joined in the consolidated returns. As we regard it, if all of the affiliated corporations which are taxable in this

state join in the consolidated return it is a sufficient compliance with our law although there may be other affiliated corporations having no tax status here." *State of Minnesota v. Oliver Iron Mining Co. et al.*, Minnesota Supreme Court, December 29, 1939. Commerce Clearing House Court Decisions Requisition No. 228396.

New York.

Crude oil imported from abroad, processed while in bond within New York City, and then delivered to vessels clearing for foreign ports held not subject to New York City sales tax by highest court. The Supreme Court of the United States has affirmed a ruling of the New York courts to the effect that the New York City Sales Tax could not be applied to sales of crude oil imported from abroad, processed while in bond within New York City and then delivered to vessels clearing for foreign ports. (*Gulf Oil Corporation v. McGoldrick*, 256 App. Div. 207, 9 N. Y. S. 2d 544; affirmed by the New York Court of Appeals, without opinion, 281 N. Y. 71. The Corporation Journal, April, 1940, page 160.) The Supreme Court of the United States, after an examination of the appropriate Federal statutes, concluded that Congress had provided "a comprehensive scheme for the regulation of the importation of the crude petroleum and of its control while in the course of manufacture in bond into fuel oil and its delivery as ships' stores to vessels in foreign commerce, all calculated to insure the devotion of the manufactured oil exclusively to that purpose." "The Congressional regulation, read in the light of its purpose, is tantamount to a declaration that in order to accomplish constitutionally permissible ends, the imported merchandise shall not become a part of the common mass of taxable property within the state, pending its disposition as ships' stores and shall not become subject to the state taxing power." "The state tax in the circumstances must fail as an infringement of the Congressional regulation of the commerce." *McGoldrick v. Gulf Oil Corporation,** The Supreme Court of the United States, Docket No. 473, October Term, 1939, decided March 25, 1940. Commerce Clearing House Court Decisions Requisition No. 234052; 60 S. Ct. 664. William C. Chandler, Corporation Counsel, Paxton Blair, Asst. Corporation Counsel, for petitioner. Matthew S. Gibson, for respondent.

* The full text of this opinion is printed in **The Corporation Tax Service, New York, page 22,101.**

General

Massachusetts.

Stock certificates endorsed by holder to brokerage firm, with latter's name inserted as attorney to effect transfer, subsequently stolen, ruled not transferable by innocent purchaser or pledgee either at common law or under Uniform Stock Transfer Act. A brokerage firm, owning four certificates of stock, sent them by registered mail

from its Cleveland, Ohio, to its New York office. Each of the certificates was endorsed on the back, at the foot of the customary transfer legend, by the person in whose name the certificate stood, and before the certificates were mailed, the name of the brokerage firm was inserted in the form of transfer on the back of each certificate as attorney to effect a transfer of the shares on the books of the corporation issuing them. The package containing the certificates was not received by the New York office, but was stolen from the mail carrier in New York as it was about to be delivered. The contents were insured by the plaintiff, who became assignee of all the rights of the broker to recover the certificates. They are now in the possession of two of the defendants, Breslin and Anderson. Two other defendants, Joseph and Leon Leshefsky, claim a lien as pledgees. The broker's name had obviously been erased on each certificate. The certificates represented shares in four companies organized in four different jurisdictions. The United States District Court, District of Massachusetts, first considered the certificates of companies organized in Delaware and the Dominion of Canada, where the common law has not been modified by the Uniform Stock Transfer Act. "It appears to be conceded," said the court, "that at common law an innocent pledgee or purchaser of a certificate of stock cannot acquire from a thief, who was not entrusted by the owner with the possession of the certificate, a title good against the true owner, although the certificate was endorsed in blank." The court accordingly ruled that plaintiff was entitled to receive these certificates, holding that the defendants acquired no valid lien in them. The court then considered the remaining certificates, representing shares in companies organized in New York and Pennsylvania, states in which the Uniform Stock Transfer Act was in force. After referring to the language of the Act, as operative in Massachusetts, where transfer was attempted, the court concluded that the rights of the brokerage firm were not affected by the attempted erasures of its name from the back of the certificates as attorney to transfer them and said: "The conclusion is compelled that the power of attorney to a specified person, endorsed on the back of the certificate, restricts the negotiability of the certificate even under the Uniform Stock Transfer Act. Such certificate is not endorsed in blank and, therefore, its delivery without more does not pass title even to an innocent purchaser." In this instance, the brokerage firm was held to have the irrevocable power to transfer on the books of the corporation and that no purchaser or pledgee could obtain such a transfer without the approval or consent of the attorney. Assuming that the defendants were innocent parties, the court concluded that they had no rights in the certificates superior to those of the plaintiff, who was entitled to a summary judgment in its favor. *Sun Insurance Office Limited of London v. Leshefsky et al.*, United States District Court, District of Massachusetts, March 7, 1940. Commerce Clearing House Court Decisions Requisition No. 232836. Bailey & Muller of New York City, for the plaintiff. *(Note: We are informed an appeal is not contemplated in this case.)*

Appealed to The Supreme Court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

DISTRICT OF COLUMBIA. Docket No. 738. *The Lawyers Title Insurance Company v. Lawyers Title Insurance Corporation,* 109 F. 2d 35. (The Corporation Journal May, 1940, page 000.) Protection of corporate name as against later corporation adopting same name. **Appeal filed, February 19, 1940. Writ of certiorari denied April 8, 1940.**

MINNESOTA. Docket No. 500. *State of Minnesota v. National Tea Co. et al.,* 286 N. W. 360; affirming decision of District Court, Second Judicial District, Ramsey County, Minnesota, in *Hahn Department Stores, Inc. v. State of Minnesota,* (The Corporation Journal, January, 1938, page 86.) Constitutionality of prior Minnesota chain store tax imposed by Laws 1933, Ch. 213. **Appeal filed, November 3, 1939. Certiorari granted, December 11, 1939. Argued, March 7, 1940. Judgment of the Supreme Court of Minnesota vacated and cause remanded to that court for further proceedings, March 25, 1940.**

NEW YORK. Docket No. 473. *McGoldrick v. Gulf Oil Corporation,* 256 App. Div. 207, 9 N. Y. S. 2d 544; affirmed, without opinion, 281 N. Y. 71. (The Corporation Journal, April, 1940, page 160.) Application of New York City sales tax to sale of oil for use as fuel on transatlantic vessels. **Appeal filed, October 18, 1939. Certiorari granted, December 4, 1939. Argued, January 2 and 3, 1940. Dismissed, per curiam, for the want of jurisdiction, January 15, 1940. Judgment vacated and case restored to docket for reargument and assigned for hearing on February 26, February 5, 1940. Argued, February 27, 1940. Affirmed, March 25, 1940.** (See page 184.)

WASHINGTON. Docket No. 822. *The State of Washington on the relation of Columbia Broadcasting Company v. The Superior Court for King County et al.,* 96 P. 2d 248. (The Corporation Journal, February, 1940, page 105.) Validity of service of process on foreign broadcasting corporation. **Appeal filed, March 18, 1940. Appeal dismissed for want of jurisdiction; writ of certiorari granted, April 8, 1940.**

WISCONSIN. Docket No. 892. *J. C. Penney Co. v. Wisconsin Tax Commission,* 289 N. W. 677. (The Corporation Journal, March, 1940, page 135.) Constitutionality of Wisconsin Privilege Dividend Tax. **Appeal filed, April 10, 1940.**

*** Data compiled from CCH U. S. Supreme Court Service, 1939-1940.**

Regulations and Rulings

CALIFORNIA—The Attorney General has confirmed a prior ruling in connection with the personal income tax that income from bonds of California and its political subdivisions is exempt from taxation. (California Corporation Tax (CT) Service, ¶ 19-501.)

FLORIDA—In an opinion to the State Comptroller, the Attorney General has held that the lien of a mortgage on real property is subordinate to the lien of the State for taxes on intangible property and that the State's lien for taxes is superior to all other liens on the taxpayer's property. (Florida CT, ¶ 29-093.)

ILLINOIS—The Deparment of Finance has completely revised Article 5 of the Retailers' Sales Tax regulations, relating to "Interstate commerce." The revision, effective April 1, 1940, includes the following provision: "Tax liability under the Retailers' Occupation Tax Act is incurred when sales at retail are made in this State, even though the property sold is transported directly to the buyer from a point outside this State, whenever the seller is engaged in the business of selling tangible personal property in this State, and whenever possession of such property is transferred to the buyer in Illinois. It is immaterial whether the purchase or contract precedes or follows the interstate shipment or whether the shipment is made f. o. b. point of origin or f. o. b. destination. Contracts or agreements purporting to require shipments of the property sold from points outside of Illinois or transfers of possession of such property outside of Illinois will not operate to exempt sellers where the tax would otherwise apply. (See *McGoldrick v. Berwind-White Coal Mining Co.,* Sup. Ct. of U. S., decided January 29, 1940, and companion cases; *Graybar Electric Co., v. Curry,* Alabama Sup. Ct., May 25, 1939, aff'd Sup. Ct. of U. S., Nov. 6, 1939.)" (Illinois CT, ¶ 60-209.)

INDIANA—The Attorney General has advised the Administrator of the Store License Division that if stores are ultimately controlled by the same corporate entity through a majority stock ownership, they may not be operated without being licensed as multiple stores owned or controlled by a single ownership. (Indiana CT, ¶ 42-503.)

MARYLAND—The State Comptroller has been advised by the Attorney General that the taxes imposed upon employers by the Federal Insurance Contributions Act (Title VIII) and the Federal Unemployment Tax Act (Title IX) are deductible in computing the net income subject to the Maryland income tax, as they are not taxes upon income. The Attorney General has also ruled that the taxes on employees under Title VIII are not deductible. (Maryland CT, ¶ 17-006.)

MISSISSIPPI—The Attorney General of Mississippi has ruled, relative to the franchise tax, that where a corporation claims the actual value of its property is substantially less than the book value, the corporation has the right to prove that the value of its property as shown on its books is incorrect and it should be allowed to file its franchise tax returns in accordance with such proof if it corrects its books to show the true value of its property. (Mississippi CT, ¶ 1554.)

Some Important Matters for May and June

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

ARIZONA—Report to Corporation Commission and Registration Fee due during June.—Domestic and Foreign Corporations.

ARKANSAS—Income Tax Return and Payment due on or before May 15. —Domestic and Foreign Corporations.

Returns of Information at the source due on or before May 15.—Domestic and Foreign Corporations.

DELAWARE—Annual Franchise Tax due between April 1 and July 1.—Domestic Corporations.

DOMINION OF CANADA—Annual Summary due on or before June 1.—Dominion Companies.

FLORIDA—Annual Report and Fee due on or before July 1.—Domestic and Foreign Corporations.

ILLINOIS—Annual Franchise Tax due on or before July 1, but may be paid up to July 31 without penalty.—Domestic and Foreign Corporations.

IOWA—Report of Transfers of Stock due on or before July 1.—Domestic Corporations.

LOUISIANA—Income Tax Return due on or before May 15.—Domestic and Foreign Corporations.

Returns of Information at the source due on or before May 15.—Domestic and Foreign Corporations.

MAINE—Annual Franchise Tax Return due on or before June 1.—Domestic Corporations.

MICHIGAN—Report of Unclaimed Moneys, Securities, Credits, etc., due on or before June 30.—Domestic and Foreign Corporations.

MISSOURI—Annual Franchise Tax due on or before May 15.—Domestic and Foreign Corporations.

Income Tax due on or before June 1.—Domestic and Foreign Corporations.

MONTANA—Annual Statement due within two months from April 1.—Foreign Corporations.

Annual License Tax based on net income due on or before June 15.—Domestic and Foreign Corporations.

NEBRASKA—Annual Report and Franchise (Occupation) Tax due on or before July 1.—Domestic Corporations.

NEVADA—Annual List of Officers and Designation and Acceptance of Resident Agent due on or before July 1.—Domestic and Foreign Corporations.

NEW JERSEY—Franchise Tax Return and Tax due on or before May 15. —Domestic Corporations. (*Note:* Prior to 1940, the Return was due on or before the first Tuesday of February and the tax was due, upon notice, in August.)

NEW MEXICO—Franchise Tax due on or before May 1.—Domestic and Foreign Corporations.

NEW YORK—Annual Franchise (Income) Tax Return (Form 3IT—Article 9-A, Tax Law) and payment of one-half of tax due on or before May 15.—Domestic and Foreign Business Corporations.

OREGON—Annual Report due during June.—Domestic and Foreign Corporations.

RHODE ISLAND—Corporate Excess Tax due on or before July 1.—Domestic and Foreign Corporations.

TENNESSEE—Annual Privilege (Franchise) Tax Return and Tax due on or before July 1.—Domestic and Foreign Corporations.

Annual Report and Franchise Tax due on or before July 1. —Domestic and Foreign Corporations.

Annual Excise Tax Report and Tax due on or before July 1. —Domestic and Foreign Corporations.

Report of Dividends paid to residents due on or before July 1.—Domestic and Foreign Corporations.

UNITED STATES—Second installment of Income Tax due June 15.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.

VIRGINIA—Income Tax due June 1.—Domestic and Foreign Corporations.

WASHINGTON—License Fee due on or before July 1.—Domestic and Foreign Corporations.

WEST VIRGINIA—License Tax Statement due on or before July 1.—Domestic Corporations.

Annual License Tax due on or before July 1.—Domestic and Foreign Corporations.

Fee to State Auditor as Attorney in Fact due on or before July 1.—Foreign Corporations and those Domestic Corporations whose principal places of business or chief works are located in other states.

WYOMING—Annual Statement and License Tax due on or before July 1.—Domestic and Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York, N. Y.

Spot Stocks—and Interstate Commerce. Treats, in a general and informal way, of the relation between the carrying of goods in warehouses in outside states and the statutory obligations which that activity, in some states, places on the corporation owning the goods.

What Constitutes Doing Business. (Revised to March 15, 1939.) A 184-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business." The digests are arranged by state, but a Table of Cases and a Topical Index make them accessible also by either case name or topic. There is also a section containing citations to cases on the question of doing business such as to make the company subject to service of process in the state.

When a Corporation Leaves Home. A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

We've Always Got Along This Way. This is a 24-page pamphlet giving brief digests of cases in various states in which corporation officials who had thought they were getting along very well with statutory representation by a business employe suddenly found themselves penalized in unusual and often embarrassing ways: such as one company that had to pay its employe-representative's alimony.

What! *We* Need a Transfer Agent? Nonsense! The foregoing is the title of a pamphlet which describes in detail, with many illustrations, the exact steps through which a stock certificate goes in being transferred from one owner to another by an experienced transfer agent—purpose being to enable any corporation official to judge more accurately whether or not his own company should use the services of a transfer agent.

Judgment by Default. Gives the gist of Michigan Supreme Court case of Rarden v. Baker and similar cases in other states, showing how corporations qualified as foreign in any states and utilizing their business employes as statutory representatives are sometimes left defenseless in personal damage and other suits.

A Corporation's Achilles Heel. Containing the complete text of the opinion of the Supreme Court of the United States in State of Washington ex rel. Bond & Goodwin & Tucker, Inc. v. Superior Court, State of Washington, of the Supreme Court of New Mexico in Silva v. Crombie & Co., and of the Supreme Court of Michigan in Rarden v. R. D. Baker Co.—three decisions of great significance to attorneys of corporations qualified in one or more states.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation—completely up-to-date as regards the most recent amendments.